IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.169 OF 2006

Prakash Ratan Kamble, adult, Indian Inhabitant, aged about 26 years, occ.Service, resident of Nandan Company, Samrat Ashok Nagar, Badlapur (E)-421 503. ...PETITIONER.

Vs.

1. Savita alias Jyoti Prakash Kamble, adult, Indian Inhabitant, aged about 24 years, resident of village Reven, Siddheshwar Colony, Lakshmi Niwas, Tal-Aland, Dist-Gulbarga, State of Karnataka.

2. The State of Maharashtra, to be served through Government Pleader, High Court, Mumbai. ..RESPONDENTS.

Mr.N.D.Kamble, Advocate for the Petitioner.

Mr.V.D.Raut, Advocate for Respondent No.1.

CORAM : SMT.RANJANA DESAI AND SMT.V.K.TAHILRAMANI,JJ.
DATED : SEPTEMBER 08, 2006.

ORAL JUDGMENT (PER : SMT.RANJANA DESAI,J.)

1. Respondent 1-wife preferred an application in Family Court No.3, Pune being PE-206 of 2003 under Section 125 of the Code of Criminal Procedure, for maintenance. Inter alia, it is the case of respondent 1-wife that the petitioner used to hit

her. He used to demand money from her parents and used to threaten that if he does not get money, he will marry someone else. According to respondent 1 the petitioner was not giving her food and was harassing her because she has not borne a child. According to respondent 1 on 25.2.2003 she was brutally hit by the petitioner and, therefore, she had to leave the house with her parents. In short, it is the case of respondent 1 that the petitioner has failed and neglected to maintain her.

2. By order dated 7.8.2003, the Family Court No.3, Pune allowed respondent 1's application and directed the petitioner to pay an amount of Rs.1500/- per month to respondent 1 as maintenance.

3. As the petitioner remained absent, the order was passed exparte. The petitioner therefore preferred an application for setting aside the said order. Since, there was delay in filing the application, the petitioner filed an application for condonation of delay. By the impugned order, the Family Court, Pune has dismissed the application for condonation of delay as also the application for setting aside the exparte order. Therefore, the

petitioner has approached this Court.

4. We have heard the learned counsel for the petitioner. He contended that the petitioner was misled by his Advocate and, therefore, he could not attend to the matter in the Family Court. He submitted that the petitioner only gets in hand Rs.3500/- per month as salary and the amount of Rs.1500/- which the Family Court has ordered him to pay respondent 1 is excessive. He submitted that, therefore, this Court should reduce the said amount or remand the matter to the trial Court.

5. We have also heard the learned counsel for respondent 1. He submitted that the petitioner was served, however, he purposely did not remain present in the Family Court. He submitted that the conduct of the petitioner disentitles him from getting any relief from this Court.

6. The order of the Family Court dated 7.8.2003 indicates that summons was served on the petitioner at the place where he is working. Infact, it is the case of the petitioner that he was sitting in the Court. According to him because his advocate misled

him, he did not appear in the matter. Since, the order dated 7.8.2003 is exparte, in our opinion, interest of justice would be served, if without going into the rival contentions, we remand the matter to the Family Court at Pune. However, respondent 1 will be put to expenses, which she may be unable to bear and, therefore, in our opinion, the petitioner should be directed to give a sum of Rs.3000/- as litigation costs to respondent 1.

7. The learned counsel for respondent 1 contended that the petitioner has filed divorce proceedings in the Court at Kalyan. Though there is an order that he should pay the travelling expenses of respondent 1, he is not paying her the travelling expenses. When we asked for an explanation from the learned counsel for the petitioner, he stated that respondent 1 is not showing any bus-tickets or railway tickets to the petitioner. We deprecate this approach. Respondent 1 is not expected to show tickets to the petitioner-husband. When there is a Court's order, he is expected to pay the travelling expenses to respondent 1. The learned counsel for the petitioner says that in future the petitioner will pay the travelling expenses to respondent 1. If, in future

the travelling expenses are not paid, and grievance in that behalf is made to the Kalyan Court, the Kalyan Court should take strict note of such conduct and pass appropriate order.

8. In the circumstances, we pass the following order :

ORDER

I. The impugned orders dated 1.4.2005 and 7.8.2003 are quashed and set aside. The impugned order dated 7.8.2003 is set aside only because it is exparte.

II. The matter is remanded to the Family Court No.3 at Pune. The Family Court No.3, Pune shall rehear the parties only on the quantum of maintenance. The Family Court shall give an opportunity to both the sides to adduce evidence if necessary and thereafter pass appropriate order.

III. We however make it clear that on the merits of the case of both the parties we have

expressed no opinion.

IV. The petitioner shall pay a sum of Rs.3000/- to respondent 1 as litigation costs within a period of three weeks from today. The above order of remand is subject to petitioner paying an amount of Rs.3000/-. We make it clear that if the amount of Rs.3000/- is not paid to respondent 1, the impugned orders shall stand confirmed. Till such time, as the Family Court hears the parties afresh and disposes of the matter, the petitioner shall continue to pay the maintenance as directed by the Family Court by order dated 7.8.2003.

V. We direct the Family Court No.3, Pune to dispose of the matter as expeditiously as possible and at any rate within a period of three months from the receipt of this order. Both the sides to cooperate with the Family Court.

VI. Criminal Revision Application is disposed of in the aforestated terms.

[SMT.RANJANA DESAI,J.]

[SMT.V.K.TAHILRAMANI,J.]